



IN THE
Supreme Court of the United States

OCTOBER TERM, 1943.

THE UNITED STATES OF AMERICA, INTER-
STATE COMMERCE COMMISSION, SEA-
TRAIN LINES, INC., *et al.*,
Appellants,

v.

No. 845. 47

THE PENNSYLVANIA RAILROAD
COMPANY, *et al.*

THE PENNSYLVANIA RAILROAD
COMPANY, *et al.*,
Appellants,

v.

No. 846. 48

THE UNITED STATES OF AMERICA, INTER-
STATE COMMERCE COMMISSION, SEA-
TRAIN LINES, INC., *et al.*

**Return on Behalf of Forrest S. Smith, Trustee of
Hoboken Manufacturers' Railroad Company.
Appellant, to Order to Show Cause Dated April
24, 1944.**

1. The Hoboken Manufacturers' Railroad Company was original complainant in the proceedings before the Interstate Commerce Commission in the matter involved in this appeal. It filed its complaint because of a Car Service Rule and Action of the Pennsylvania Railroad and other appellants pursuant thereto in refusing to permit the Hoboken to deliver their cars loaded with freight to the

vessels of Seatrain Lines, Inc. in the performance of through transportation. The interchange arrangement with Seatrain substantially increased the revenues of the Hoboken Manufacturers' Railroad Company and have been vital to its continued operation. Attached hereto is an affidavit of the Trustee as permitted by the Court, showing the revenue derived by Hoboken Manufacturers' Railroad Company over a period of ten years from Seatrain traffic and other traffic.

2. By its order in a proceeding entitled "Seatrain Lines, Inc. *against* Akron, Canton & Youngstown Railway, Docket No. 25727" in which the Hoboken was a defendant, the Interstate Commerce Commission ordered the railroads, including the Hoboken, to establish and maintain through routes for through transportation in connection with Seatrain and prescribed and ordered the maintenance of joint through rates for such transportation. This order of the Interstate Commerce Commission is in full force and effect without termination date.

3. In the interchange of freight in the performance of through transportation with Seatrain pursuant to the order of the Commission above referred to or otherwise, it is important that the Hoboken Manufacturers' Railroad Company be able to deliver the freight to the vessels of Seatrain in the cars in which such freight is received by it, including cars of the Pennsylvania Railroad and other Trunk Line railroad appellants. If the Hoboken Manufacturers' Railroad Company may not do this, it will be compelled to incur great expense, either in unloading the cars and delivering the freight loose, or in transferring the freight to cars of other railroads who have consented to interchange with Seatrain. In either of these events, not only will the Hoboken Manufacturers' Railroad Company be caused expense, but the through transportation service will be impaired.

4. With the requisitioning by the Government of the use of its vessels for war purposes, Seatrain on or about April 11, 1942 suspended its operations, but by Public

Notice filed with the Commission expressly stated that its service was merely "temporarily suspended." Joint through rates in connection with Seatrain, to which Hoboken is a party, have been maintained in effect and changed from time to time, and the Commission's order prescribing joint through rates and through routes is, as has been stated, still in effect without termination date.

5. On or about July 26, 1943, as the result, among other things, of reduction of its revenues due to the temporary suspension of Seatrain Service, the Hoboken Manufacturers' Railroad Company filed a petition to the United States District Court for the District of New Jersey for reorganization pursuant to Section 77 of the Bankruptcy Act. The petition was allowed and thereafter, on or about November 12, 1943, Forrest S. Smith qualified as Trustee of the property of the debtor and has been substituted in the place and stead of Hoboken Manufacturers' Railroad Company as an intervenor-defendant in this action, and as an appellant and appellee herein.

6. Under the provisions of Section 77 of the Bankruptcy Act, a plan of reorganization must be presented within such time as the court may permit. Whether such plan can be prepared at all and if so the nature of the plan, will depend upon whether, with the resumption of service by Seatrain, which is anticipated when its vessels are returned to it or other vessels become available, it will be possible for this appellant to deliver freight to and receive freight from Seatrain in railroad cars. Therefore the decision by this Court of the issues in this proceeding which directly concern this question, is essential for the preparation of a plan of reorganization.

7. Furthermore, when its vessels are returned to it, the order of the Commission prescribing through routes and joint rates in connection with Seatrain, which order is binding upon this appellant, will immediately become effective, and if this appellant may not perform such through transportation by interchanging freight in the railroad cars of the appellant Trunk Line railroads, it will suffer serious

financial distress. Indeed, without the revenues from Seatrains traffic, the Hoboken probably will not be able to operate at all.

8. Moreover, as more fully set forth in the affidavit of the Trustee annexed hereto, there are pending in the United States District Court for the Southern District of New York two suits brought by the Pennsylvania Railroad Company against the Hoboken Manufacturers' Railroad Company and Seatrains Lines, Inc. involving administrative questions on which it is believed that the determination of the Interstate Commerce Commission is necessary before submission to the Court. Since these administrative questions are involved in the present litigation, these two suits have, pursuant to orders of the District Court or on stipulation, been adjourned from time to time or held upon the suspense calendar of that court awaiting the determination of these issues by the Commission and thereafter awaiting the decision in the pending action with regard to the Commission's jurisdiction and the validity of its determination. If this court should decline to pass upon these questions on the ground that the present case has become moot, these pending suits would have to be further adjourned until the administrative questions could again be brought to the Commission in another proceeding and the Commission's determination therein passed on by the courts.

9. For these reasons we respectfully submit that the court should conclude that the issues involved have not become moot merely because Seatrains' service has been temporarily interrupted by the diversion of the vessels to war use.

Respectfully submitted,

JAMES D. CARPENTER, JR.,
Counsel for Forrest S. Smith, Trustee
for Hoboken Manufacturers' Railroad Company,

75 Montgomery Street,
Jersey City 2, N. J.

Affidavit of Forrest S. Smith.

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } ss.:

FORREST S. SMITH, of full age, being duly sworn on his oath according to law, deposes and says:

I am the duly appointed and qualified Trustee in reorganization under Section 77 of the Bankruptcy Act of Hoboken Manufacturers' Railroad Company.

Annexed hereto and made a part hereof is an analysis made pursuant to my instructions by J. B. Cossolini, auditor of Hoboken Manufacturers' Railroad Company, of Seatrain Lines, Inc. tonnage on the one hand and all other tonnage passing over the lines of Hoboken Manufacturers' Railroad Company for the years 1932 to 1942 inclusive. The first Seatrain tonnage that Hoboken Manufacturers' Railroad Company enjoyed was in the year 1932. On or about April 11, 1942 Hoboken Manufacturers' Railroad Company lost further Seatrain traffic because the Government requisitioned the Seatrain vessels for war purposes and removed them from the Port of New York.

I verily believe from my study of the affairs of the Hoboken Manufacturers' Railroad Company that that Railroad cannot operate successfully as a railroad and cannot be reorganized if it permanently loses the traffic that for the last twelve years has passed over its lines to and from Seatrain vessels. Moreover, I believe it will be impossible to formulate a plan of reorganization until the right of Seatrain to operate as before is determined.

Furthermore this appellant is defendant in two suits pending in the United States District Court for the Southern District of New York—Civil 6-326 and 414 brought by the Pennsylvania Railroad Company, one of the appellants in 846, against Hoboken Manufacturers' Railroad Company and Seatrain Lines, Inc. to recover compensation for the use, or damages for the alleged conversion, of cars of the Pennsylvania Railroad delivered by this appellant to the

vessels of Seatrain. One of the issues in these suits is whether a so-called "Car Service Rule" involved in the present appeal, which rule purports to authorize the Pennsylvania Railroad to withhold its consent to the interchange of its cars with Seatrain as a water carrier in the performance of through transportation is a just, reasonable and lawful car service rule. Another issue is what will constitute a reasonable per diem charge to be paid by Seatrain and this appellant for the use of such cars when in their possession. Since these are administrative questions, as to which it is believed a determination of the Interstate Commerce Commission must first be had, these suits, pursuant to orders of the court or by stipulation, have been adjourned from time to time, or held on the suspense calendar of the court, pending a determination of these administrative questions by the Interstate Commerce Commission in the proceeding involved in this action, and thereafter pending final determination as to the validity of the Commission's order. If the present appeal is dismissed on the ground that the case has become moot, deponent is informed and believes that it will be necessary to present these administrative questions to the Commission in another proceeding, which will involve duplication of hearings and testimony and which may again invite judicial review of the Commission's determination before the New York District Court can proceed to a final decision in these two pending suits.

FORREST S. SMITH.

Sworn to and Subscribed before me }
 this 29th day of April, 1944. }

WILLIAM L. ULYAT

Notary Public of New Jersey.

My Commission expires Dec. 21, 1947.

(SEAL)

**Breakdown of Seatrain Lines, Inc., and Other Tonnage Handled From
1932 to 1942, Inclusive.**

Year	1932	1933	1934	1935	1936
Seatrain	18,575	192,829	264,584	313,192	334,898
Other	115,157	93,023	86,463	94,182	105,008
Total	133,732	285,852	351,047	407,374	439,906

Year	1937	1938	1939	1940	1941	1942
Seatrain	329,481	344,777	343,286	467,705	549,454	37,521
Other	124,050	103,376	137,128	166,753	285,973	388,055
Total	453,531	448,153	480,414	634,458	835,427	425,576